

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on : 05.03.2007

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WP (C) 3026/2003

MR K.K. VERMA AND ANOTHER

...Petitioners

- versus -

**PRADESHIYA INDUSTRIAL INVESTMENT
CORPORATION OF UTTAR PRADESH(PICUP)**

...Respondent

Advocates who appeared in this case:

For the Petitioners : Ms Sobhana Takiar.

For the Respondent/PICUP : Mr Sandeep Aggarwal with Mr Ravi S. S. Chauhan.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in Digest? | YES |

BADAR DURREZ AHMED, J (ORAL)

1. The issue involved in this petition at the threshold is with regard to territorial jurisdiction. The petitioners are guarantors to a loan taken by Crystal Steering Limited from PICUP and UPFC to the extent of Rs.46.65 lacs. The loan agreement was executed on 14.5.1987 in Lucknow. The said Crystal Steering Ltd could not repay the loan amount in time and, therefore, PICUP sought to take remedies for recovery of the loan amount from the principal debtor as well as the guarantors. PICUP had remedies under the State Financial Corporations Act, 1951 read with U.P. Public Moneys (Recovery of dues) Act,

1972.

2. In the present petition, the prayer that has been made is for the quashing of recovery notice issued to the guarantors (the petitioners herein) by the Collector Grade-II (South-West District), New Delhi on 7.10.2002. The said recovery notice was issued for the sum of Rs.5,61,56080.70 + 16.5% interest w.e.f. 1.11.2001 + other Misc Expenses amounting to Rs 13,13,168.79. It was mentioned in the notice that the same was recoverable from the petitioners as arrears of land revenue. The recovery notice which was issued by the Collector, Grade-II (South-West District), New Delhi was on the basis of recovery certificates which had been issued by the PICUP on 4.12.2001 against the petitioner Nos 1 and 2 under the U.P. Public Moneys (Recovery of dues) Act, 1972. A copy of the recovery certificate was marked as annexure R-3 filed along with the "short affidavit" filed on behalf of the respondent Nos 1 and 2. It was submitted that the said recovery certificate was issued by PICUP at Lucknow and, therefore, the courts at Delhi did not have jurisdiction inasmuch as what is sought to be quashed by way of this petition are recovery notices which are based upon the said recovery certificates issued at Lucknow and unless and until the recovery certificate issue at Lucknow is set aside, the setting aside of the recovery notice at Delhi would have no meaning.

3. According to the learned counsel, appearing on behalf of the

respondents, the issue involved in the present case with regard to jurisdiction is no longer open for debate in view of the decision of this court in **Callipers Naigai Ltd & Others v Government of NCT of Delhi & Ors : 2004 (73) DRJ 104** wherein one of the questions raised was “*whether the mere issuance of a recovery notice at Delhi would clothe this court with the territorial jurisdiction to entertain a writ petition?*” This question was answered in the negative. While answering this question, the provisions of Section 3 of the U.P. Public Moneys (Recovery of dues) Act, 1972 was examined thread-bare. From a reading of Section 3(1) of the said Act, it would become clear that whenever there is a default in repayment of loan or advance or any installment thereof, the Managing Director of the Corporation (in this case PICUP) may send a certificate to the Collector mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue. Section 3(2) of the said Act made it clear that the Collector, on receiving the certificate, was required to proceed to recover the amount stated therein as an arrear of land revenue. Section 3(5) of the said Act made it further clear that subject to the exceptions provided therein, every certificate sent to the Collector under Section 3(1) of the said Act would be final and could not be called in question in any original suit, application or in any reference to arbitration, and no injunction could be granted by any court or other authority in respect of any action taken or intended to be taken in pursuance of any power conferred by or under the Act.

4. Thereafter, the provisions of the Revenue Recovery Act, 1890 were also considered to indicate the manner in which an arrear of land revenue is to be recovered. Sections 3, 4 and 5-A of the said Revenue Recovery Act, 1890 were considered in detail and the court came to the following conclusion :

“Upon a reading of the aforesaid provision, it becomes clear that under Section 3 of the RR Act, where an arrear of land revenue or a sum recoverable as an arrear of land revenue is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the Schedule stating the name of the defaulter and such other particulars as may be necessary for his identification or the amount payable by him or the account on which it is due. Section 3(2) stipulates that the certificate shall be signed by the Collector making it, and save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated. Sub Section (3) of Section 3 mandates that the Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district. Two things are clear. Firstly, the certificate issued by the Collector in the district where the arrears accrued shall be conclusive proof of the matter stated therein and secondly, the collector of the other district is duty-bound to give effect to this certificate and proceed to recover the amount stated therein. From this, it becomes apparent that the Collector who receives such a recovery certificate has no role to play except to recover the amount stated in the recovery certificate as arrears of land revenue. He merely performs a ministerial function. He does not decide any lis and any action taken by him does not have the trappings of a quasi-judicial function.

7.2 Section 4 of the RR Act provides for the remedy available to a person denying liability to pay under such a notice. The remedy is that he must pay the amount under protest made in writing at the time of payment and signed by him or his agent and thereafter institute a suit for the repayment of the amount or the part thereof so paid. Section 4(2) further provides that such a suit must be instituted in a civil court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose. Section 5-A is relevant for the purpose that the certificate may be sent by the Collector of a District in Uttar Pradesh to authorities in respect of defaulters being or having property outside Uttar Pradesh.”

Thereafter, this court concluded as under :

“7.3. The gravamen of the matter is the Managing Director of PICUP issued a recovery certificate which was sent to the collector, Lucknow, Uttar Pradesh who in turn sent it to concerned Collector in Delhi and on the basis of which the impugned notice dated 30.4.2001 has been issued by the respondent No.1. In the context of the foregoing provisions it becomes abundantly clear that the respondent No.1 had merely performed a ministerial function in issuing the impugned notice dated 30.4.2001. As such, in the first instance, it does appear to me that no writ of certiorari can at all be issued quashing the impugned recovery notice dated 30.4.2001 which has merely been issued in exercise of a ministerial function. There is the added question as to whether mere issuance of such a recovery notice would constitute a part of the cause of action for this petition or not?”

5. In the decision of *Callipers Naigai Ltd & Others* (supra) another decision of this court in the case of *Vinod Kumar Mehta & Ors v Haryana Financial Corporation and Others* : 2003 (71) DRJ 348 was also referred and

with reliance upon the same, this court held in *Callipers Naigai Ltd & Others* (supra) as under :

“9. In the aforesaid decision, which clearly dealt with a similar situation, it was held that recovery notices such as the one impugned herein do not form an integral part of the cause of action and, therefore, this court would not have territorial jurisdiction to entertain the writ petition challenging the recovery notice. I see no reason to depart from this view. The lis is with PICUP. Consequently the cause of action is qua PICUP. Unfortunately that has entirely arisen outside the territorial jurisdiction of this Court. The issuance of the recovery notice has no relevance with the lis that is involved in the case. It is the result of a purely ministerial act on the part of Respondent No.1 who cannot be faulted for acting in the manner he did. The statute required him to do so. He had no discretion in the matter. He had no lis to decide. The recovery notice is merely an effect and not the cause. It is the cause which confers jurisdiction and not the effect. Then, the answer to question No.2 is that the mere issuance of the impugned recovery notice at Delhi does not clothe this court with the territorial jurisdiction to entertain this petition.”

It is therefore clear that this court would not have territorial jurisdiction to entertain the present writ petition.

6. Before parting with this decision, it would be necessary to mention another complication which has occurred in this case. The petitioners had initially approached the Allahabad High Court by filing a writ petition before that court. Unfortunately, for them, a Division Bench of the Allahabad High Court hearing the matter dismissed the same on 2.4.2003 on the ground that the Allahabad High Court did not have jurisdiction and it was the court at Delhi

which had jurisdiction to entertain the petition. The learned counsel for the petitioners submitted that the petitioners had correctly approached the Allahabad High Court but after the Division Bench dismissed the petition it had no option but to approach this court and the petitioners ought not to be faulted /penalized for this.

7. It is unfortunate that the Allahabad High Court did not entertain the petition of the petitioners on the ground of lack of territorial jurisdiction but this does not mean that this court should entertain a petition which, according to the precedents of this court, would not fall within the territorial jurisdiction of this court. Two wrongs do not make a right. For these reasons, this petition is dismissed on the ground of lack of territorial jurisdiction. The interim order passed in this matter shall continue for a period of four weeks to enable the petitioners to take appropriate steps in this matter.

**BADAR DURREZ AHMED
(JUDGE)**

March 05, 2007

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